IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7230 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRASHANT S MEHTA

Versus

SIHOR NAGAR PALIKA

Appearance:

1. Special Civil Application No. 7230 of 2004

MR RM CHHAYA for Petitioner No. 1-5

MR ANANT S DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 24/08/2004

ORAL JUDGEMENT

Rule. Mr.A.S.Dave, learned advocate, waives service of notice of rule on behalf of the respondent. At the joint request of the learned advocates appearing

for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioners have challenged the action of the respondents in terminating their services with effect from 25.5.04. It is the case of the petitioners that petitioner No.1 was working as Overseer with the respondent since February 1997 and petitioner No.2 was working as a Shop-clerk since June 1994. The petitioner No.3 is working as Surveyor since May 1996. The petitioner No.4 is working as Jr. Clerk since October, 1993. The petitioner No.5 is working as Clerk since October 1997. It is also the case of the petitioners that they have been working since their engagement, as mentioned above, without any break.

3. The petitioners have stated in the petition that despite their long continuous service, their services came to be terminated by an oral order dated 25.5.04. It is the case of the petitioners that the said termination was brought about without following any legal formalities, without any notice or notice pay or offering retrenchment compensation as required under section 25-F of the Industrial Disputes Act. It is also the case of the petitioners that the termination is malafide since the same was actuated by the instructions of the President of the Nagarpalika.

4. The respondent has not filed any reply to controvert the factual averments made in the petition. In the result, therefore, the allegation of the petitioners that they have been working as mentioned above is not seriously in dispute. The allegation that their services were terminated by an oral order dated 25th May 2004 without following the provisions of section 25-F of the Industrial Disputes Act is also not denied. In that view of the matter and in view of the proved breach of the mandatory provisions of section 25-F of the Industrial Disputes Act, this would not be a fit case for relegating the petitioners to approach the Labour Court for raising an industrial dispute.

5. In view of the special facts of the present case, therefore, the present petition is entertained and in view of the fact that the services of the petitioners have been terminated with effect from 25.5.04 in violation of the provisions of section 25-F of the Industrial Disputes Act, the same is quashed and set aside. The respondent is directed to reinstate the petitioners in service with continuity for all purposes except backwages. In view of the fact that the President

of the Nagarpalika has not been joined as party-respondent, I am not expressing any opinion on the allegations of malafide made by the petitioner.

6. In the result, the petition is allowed as aforesaid. Rule is made absolute accordingly with no order as to costs.

Direct service.

(Akil Kureshi, J.)
(vjn)